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Illinois -- Insurance
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Analysis of the new
Illinois insurance code
governing fraternal
benefit societies.



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ANALYSIS THE LIBRARY OF THE
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UNIVERSITY OF ILLINOIS
NEW ILLINOIS INSURANCE CODE
GOVERNING
FRATERNAL BENEFIT SOCIETIES

This analysis of the proposed code provisions has been prepared by the Insurance Department for the information of Societies transacting business in Illinois, as well as their members and other interested parties.

THE INSURANCE CODE COMMISSION

House of Representatives
HON. GEORGE A. FITZGERALD,
Chairman;
HON. B. S. ADAMOWSKI,
HON. G. J. JOHNSON.

Senate
HON. JAMES J. BARBOUR,
Secretary;
HON. LOUIS O. WILLIAMS.

STATE OF ILLINOIS
HENRY HORNER, Governor
DEPARTMENT OF INSURANCE
ERNEST PALMER, Director

January, 1935.

[Printed by authority of the State of Illinois.]



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UNIVERSITY OF ILLINOIS

**ANALYSIS OF ARTICLE XXII OF THE PROPOSED
INSURANCE CODE GOVERNING FRATERNAL
BENEFIT SOCIETIES.**

This analysis covers Article XXII governing Fraternal Benefit Societies. The Article is analyzed section by section with cross references to the present law of Illinois, Insurance Department edition.

While Article XXII is, in the main, a complete revision of the present law, some sections of the present law have been consolidated in the new Article and clarified where necessary. Some Sections have remained unchanged and some sections have been completely revised and entirely new provisions have been added.

In drafting this Article it was borne in mind that the main purpose was to draft a law not only for the closer supervision of such societies which the experience of the Department has proved to be necessary in a few cases, but also to raise the standard of operation with particular reference to the rates charged and the resulting and continued solvency of such societies.

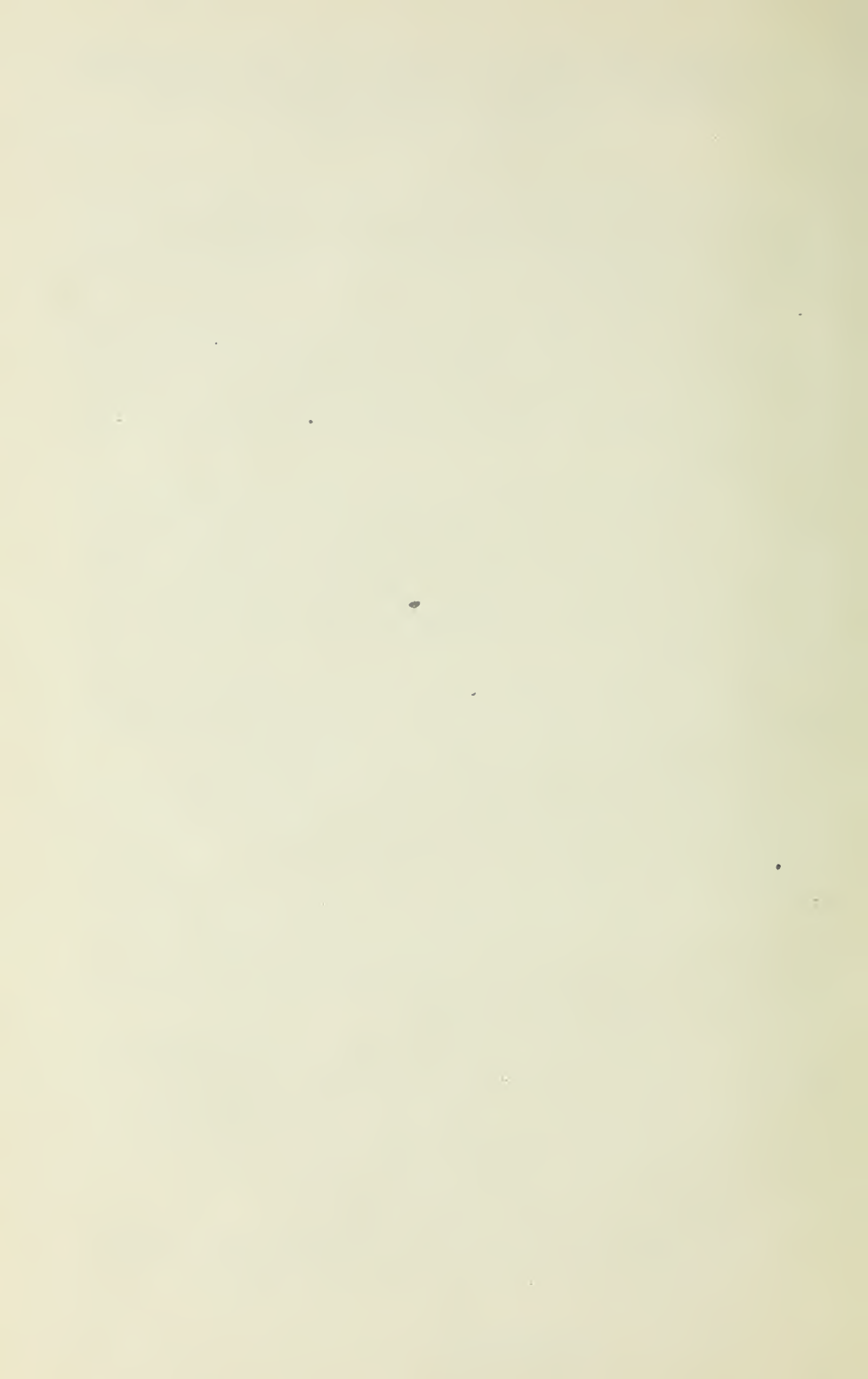
It may safely be said with justice to Fraternal Benefit Societies generally that they have operated satisfactorily in the great majority of cases under the present law.

There are at present approximately 150 Fraternal Benefit Societies licensed to transact business in Illinois, having a membership of several hundred thousand citizens of Illinois. They are a very useful and beneficial part of the insurance structure of the State and have very far-reaching influence in the social welfare of our people. We believe the provisions proposed in the new insurance code for the regulation of these societies are sound and for the best interests of all concerned and impose no unnecessary burdens.

In this analysis several suggestions have been made for changes in the code as originally prepared and printed and they will be given consideration by the Code Commission.

Briefly, the changes of major importance are as follows:

1. The Benefits Payable (Section 263).
2. Certificate Provisions (Section 266).
3. Rates to be charged (Section 268).
4. Investments and Real Estate Holdings (Section 269).
5. Valuations and Solvency Tests (Section 274).



ARTICLE XXII—FRATERNAL BENEFIT SOCIETIES.

SECTION 259—FRATERNAL BENEFIT SOCIETY DEFINED.

(Cross Reference, Page 178, Section 1, with changes.)

This is a clearer definition of a fraternal benefit society and which definition embodies the essential and characteristic features of such societies, which are lacking in the present law.

SECTION 260—LODGE SYSTEM DEFINED.

(Cross Reference, Page 178, Section 1, with changes.)

This section defines the lodge system while the present law merely provides for a lodge system without defining it. In addition, this section makes it mandatory that the subordinate lodges or branches hold regular or stated meetings at least once in each month. This last feature was deemed advisable in order to preserve the representative form of government, characteristic of all fraternal benefit societies and to prevent the commercialization of fraternal benefit societies by the managing officials.

SECTION 261—REPRESENTATIVE FORM OF GOVERNMENT DEFINED.

(New.)

This is an entirely new section and the present law merely provides that every society shall have a representative form of government but does not define it. In the past it has been rather difficult in some cases to accurately determine whether any particular organization not licensed by this Department was operating as a fraternal benefit society and should comply with the Fraternal Act of this State. This section of the proposed code, read in conjunction with Sections 259 and 260, will remove any such question in the future. In addition, this section prescribes the mode of election of delegates from the subordinate lodges or branches and by its provision makes it impossible for the officers and directors of such a society to

so limit the number of elective delegates that the officer members of the convention can control the convention. Further, in keeping with the representative form of government theory of fraternal benefit societies, this section makes it compulsory that all such societies hold a meeting of its supreme legislative body at least as often as once in four years.

SECTION 262—EXEMPTIONS.

(Cross Reference, Page 180, Section 1, with changes.)

This is substantially the same as the present law and provides that all societies shall be governed exclusively by Article XXII except as otherwise provided in the article.

SECTION 263—BENEFITS.

(Cross Reference, Pages 178-179, Section 1, with changes.
Page 187, Section 7, with changes.)

Under the present law it is difficult if not impossible to accurately determine the forms of benefits which fraternal beneficiary societies may provide.

The title of the old act is "An Act to provide for the organization and management of fraternal beneficiary societies for the purpose of furnishing life indemnity or pecuniary benefits to beneficiaries of deceased members, or accident or permanent disability indemnity to members thereof; * * *." In the body of the act, Section 1, it is provided that a fraternal beneficiary society might "make provision for the payment of benefits in case of disability and death, or of either, resulting from either disease, accident or old age of its members." There has been some question regarding the constitutionality of the present law by reason of the provisions contained in the title of the Act and the provisions contained in the body of the law. Furthermore, the present law restricts the class of benefits which a society may provide.

This section of the proposed code makes it mandatory that all societies provide for the payment of death benefits and that provision was inserted primarily to prevent a fraternal society operating as such, from limiting its business to health and accident writing.

This section provides for the forms of certificates and coverage which a fraternal benefit society can issue. Since the proposed code seeks to broaden the scope of operation

of a fraternal benefit society and to bring such societies up to a solvency of 100 per cent, it is naturally contemplated that such societies will have mortality gains and savings and investment returns in excess of the required reserves, after deduction of all operating expenses, which gains and savings and investment returns will be properly disbursable to the membership either in the form of dividends, credits to the certificates for the purpose of purchasing paid-up additions, or in the form of premium waivers. To guarantee the payment or credits to the members entitled thereto the second paragraph of this section provides that such accounting, apportionment and distribution of profits, savings or earnings or surplus shall not be deferred for a longer period than one year, with a proper exemption for societies which at the time of the enactment of the proposed code have in operation a different plan of distribution, but which exemption shall apply only to certificates in force at the effective date of the code.

The second paragraph of this section deals solely with funeral benefits. Under the present law the only provision regarding funeral benefits is that no medical examination shall be required for a funeral benefit for death from any cause of not more than \$100.00. The present law does not provide the form of certificate or rider evidencing such funeral benefits nor the payee thereof and it was discovered that some societies were providing for the \$100.00 funeral benefits, making payment thereof to the undertaker or other persons outside the class of permissible beneficiaries under the statute.

To clarify the funeral benefit provision this paragraph of the proposed code provides that such funeral benefits shall be evidenced either by a separate certificate or by a rider attached to any form of certificate permitted by that article. It was deemed advisable also to increase the funeral benefits from \$100.00 to \$200.00.

Since the primary purpose of payment of funeral benefits by fraternal societies is to provide for a decent burial of a member living in this country whose sole heirs reside in a foreign country, the proposed code provides that the benefit shall be payable to the subordinate lodge or branch in which the member held membership at date of death and that any balance remaining should revert to the society for the benefit of its mortuary fund. It is not anticipated that fraternal

benefit societies will issue many such funeral benefits by reason of the limited number of cases necessitating such payments.

SECTION 264—BENEFICIARIES.

(Cross Reference, Page 179, Section 1.)

This section is the same as the present law and defines the classes of permissible beneficiaries under a fraternal benefit certificate.

SECTION 265—QUALIFICATION FOR MEMBERSHIP.

(Cross Reference, Pages 180-181, Section 2¹/₈, with changes.
Page 186, Section 7. Page 187, Section 7, with changes.)

This section reduces the minimum adult membership age from eighteen to sixteen, leaving the maximum age at sixty. While the present law provides for a medical examination only in connection with the five hundred applicants required for organization purposes, the law has been construed, and properly so, to permit admission to membership after organization, upon a declaration of insurability in lieu of a medical examination and the proposed code expressly provides for same. The proposed code also provides that any member of such a society who more than six months after becoming a member applies for additional benefits, must be medically examined or execute a new declaration of insurability.

The last portion of this section is new and permits fraternal societies to accept general or social members who shall have no voice or vote in the management of the society and while the present law contains no such provision, it has been generally conceded that fraternal societies under the present law, are permitted to accept general or social members.

SECTION 266—CERTIFICATES.

(New.)

The first paragraph of this section makes it compulsory that all societies issue a benefit certificate to beneficial members, evidencing the membership and insurance to which the member is entitled and defines the entire contract and concludes with the characteristic open contract provision that any changes, additions or amendments to the charter or arti-

cles of association, constitution and by-laws duly enacted subsequent to the issuance of the original certificate shall be binding upon the member and his beneficiaries.

The balance of this section deals with standard provisions and prohibited provisions under benefit certificates issued by such societies and provides for the approval of all forms of certificates by the Director before the same may be issued in the State of Illinois.

With particular reference to the standard provisions enumerated:

(a) Under the present law it is possible for a fraternal benefit society incorporated or organized under the laws of the State of Illinois, by apt provision in the certificate or constitution and by-laws, to escape liability in whole where the age of the applicant, although within the statutory limiting ages, was innocently misstated. Under this section it is provided that in such a case the liability of the society shall be such as the premium would have purchased at the correct age according to the society's published rate at date of issue of the certificate.

(b) This provision was inserted to compel societies granting nonforfeiture values to insert a table in the certificate showing the nonforfeiture values during at least the first twenty years of the certificate.

(c) This provision was inserted so that the insured might at a glance determine the form of certificate which he held.

(d) While it is uniformly the practice of fraternal societies to provide a grace period for the payment of premiums, in order that the members of all fraternal societies operating in Illinois might have such a privilege guaranteed, it was deemed advisable to expressly provide for such.

Most fraternal contracts are issued with premiums on a monthly basis, and where issued on an annual premium basis, it is customary to permit the payment of the annual premium in monthly installments.

The intent in drafting this provision of the proposed code was to establish a legal minimum grace period in language general enough to cover all cases, and in so doing, the month of February was considered. This section as written provides for a grace period of not less than *twenty-seven* days, whereas it should have been *twenty-eight* days, since under

the practice of such societies, the monthly premiums are due on the first day of a calendar month, and the insured is given the balance of the particular month as a period of grace.

To properly provide for the required grace period, we suggest that in lieu of sub-section (d) of Section 266, the following be inserted:

“(d) A provision that the insured is entitled to a grace of not less than twenty-eight (28) days within which the payment of any premium after the first may be made. During such period of grace the certificate shall continue in full force, but in case the certificate becomes a claim during the said grace period before the overdue premium is paid the amount of such premium or premiums may be deducted in any settlement under the certificate.”

The latter portion of this section contains two prohibited provisions for fraternal certificates, as follows:

(a) Prohibits a limitation of action clause in the *certificate* to less than three years after the cause of action accrues.

This provision is deemed necessary for the reason that some societies have a certificate or by-law provision compelling suit to be brought within a shorter period of time, even as low as one year. Most fraternal by-laws contain a provision establishing within the order a tribunal where an aggrieved member or beneficiary may resort for the settlement of disputes. Such provisions have been considered by the courts of this and other states and those courts have held that the member or beneficiary cannot seek the aid of the courts of law until all remedies within the society as provided for, have been exhausted. Not only is a limitation of action clause shorter than three years obviously unfair and inequitable by reason of circumstances wholly beyond the control of the member or his beneficiaries, but by the use of a shorter period it is possible for a society by dilatory practices to so delay recourse to the tribunal of the society that the aggrieved party would be precluded from resort to the courts.

Attention is called to an oversight in framing this subdivision. The title of Section 266 is “Certificates”, and the subdivision deals with certificates and not contracts, yet in the beginning of this section, the entire contract is clearly defined. The portion of this section in need of revision, is as follows:

“The Director shall not approve any form which contains either of the following provisions:

(a) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.”

By reason of the peculiar wording of the portion above quoted, it would be possible for a society to submit and have approved, a certificate form in compliance with this section, yet have embodied in the by-laws, a limitation of action clause shorter than three years. We suggest by way of correction to substitute in lieu of the provision above quoted, the following:

“The Director shall not approve any form which contains either of the following provisions:

(a) A provision *in the contract*, limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.”

(b) This provision prevents the back-dating of a certificate for more than six months prior to the date of the application and was deemed necessary for the protection of the society especially where the society was setting up an adequate reserve and granting nonforfeiture values, for to permit the back-dating more than six months would compel the society to set up reserves which had not been earned on the certificate.

SECTION 267—BENEFITS ON LIVES OF CHILDREN.

(Cross Reference, Pages 180-181, Section 2¹/₈, 2¹/₄, 2³/₈ and 2¹/₂, with changes.)

This section provides for insurance or annuities, or both, upon the lives of children less than sixteen years of age, while the present law provides for less than eighteen years of age. In addition, the maximum benefits at the various ages are increased over the amounts provided in the present law and provides that the maximum benefit of \$1,000.00 shall be reached at age four while under the present law the maximum of \$1,000.00 is not reached until age fourteen. Most states permit the payment of higher benefits at the various ages than permitted under the present Illinois law and there is no logical reason why the increased benefits should not be provided for, as has been done under the proposed code.

Under the present law there is a provision that such a society should have the power to provide for means of enforcing payments of contributions, etc., on juvenile certificates and since such a power is not legally possible that has been omitted from the proposed code.

SECTION 268—FUNDS.

(Cross Reference, Page 178, Section 1, with changes.)

The first portion of the first paragraph of this section permits the establishment of emergency, surplus or other similar funds by a fraternal benefit society similar to the provision in the present law.

Since fraternal societies engage in charitable and benevolent activities and various other functions, we feel the first portion of this section should be revised to permit the establishment of funds for the proper exercise of those functions and therefore suggest the first three sentences be changed to read as follows:

“A society may create, maintain, invest, disburse and apply an emergency, surplus, patriotic, relief or other similar funds in accordance with its constitution and by-laws. Such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein, or become entitled to any apportionment or the surrender of any part thereof, except as provided in Section 263 of this article. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members or subordinate bodies of the society, together with accretions of such funds and all such payments for benefit and expense purposes shall when received by the society be immediately allocated to the respective fund or funds and in the proportions provided by the laws of such society, and all accretions shall remain in the funds in which such accretions accrue.”

The latter portion of the first paragraph of this section provides that no society authorized to do business in this State on the effective date of the code, or thereafter incorporated or licensed to do business in Illinois, shall eighteen months after the effective date of the code, issue any certificate in this State which does not provide for a rate of payment

sufficient for meeting the mortality obligations contracted, when valued upon the basis of the American Experience Table of Mortality, or any higher standard, with an interest assumption of not more than 4 per cent per annum, and likewise, such society cannot eighteen months after the effective date of the code, issue certificates providing for temporary or permanent disability benefits except upon a table of reliable experience with an interest assumption of not more than 4 per cent per annum. Societies which on the effective date of the code are authorized to do business in the State of Illinois, may however, continue to issue the forms of certificates then issued during said eighteen months period.

The second paragraph of this section deals with deferred payments of instalments on claims and provides that the deferred payments shall be considered as fixed liabilities upon the happening of the contingency for which such payments or instalments are to be paid and that such liability shall be the present value of such future payments or instalments upon the same rate of interest and mortality assumed by the society for valuation purposes and concludes with the provision that every society issuing such contracts must maintain a fund sufficient at all times to meet such liability regardless of proposed future collections for that purpose.

Paragraph three of this section provides that all laws of the society providing for payments by its membership shall distinctly state the purpose of the same and the portion thereof which may be used for expenses and concludes with the statement "and no part of the money collected for mortuary or disability purposes, or the net accretions of either or any of said funds, shall be used for expenses." The Attorney General of this State has informally construed the present law to permit payment from the Mortuary or Reserve Fund of investment expenses incident to the protection of the investments in those particular funds. The last paragraph of the proposed code section completely ignores investment expenses and we are of the opinion this paragraph should be amended to specifically provide for expenses incident to investments to be paid out of the fund in which the particular investment is carried. Moreover this paragraph of the section should be further amended by striking the word "net", for the "net" accretions of any particular fund are rather difficult to determine in connection with a fund established

years before. We suggest to substitute in lieu of the third paragraph of Section 268, the following:

“Every provision of the laws of a society providing for payments by its members, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses and no part of the money collected for mortuary or disability benefits or the accretions of either or any of said funds shall be used for general expenses, nor for any other purpose than the payment of death and disability benefits, endowments, annuities, dividends, cash withdrawal equities, paid-up and extended insurance, reinsurance premiums, and investments expenses necessarily incident to the investments of any or either of said funds and all investment expenses shall be paid out of the fund in which the particular investment in connection with such expenses is carried.”

SECTION 269—INVESTMENTS OF FUNDS AND REAL ESTATE HOLDINGS.

(Cross Reference, Page 191, Sections 1-2, with changes.)

This section provides that all funds of all domestic societies after the effective date of the code, shall be governed by the investment provisions of the code pertaining to life insurance companies and that all investments by domestic societies shall conform thereto not later than July 1st, 1937, with discretion vested in the Director to extend the time for disposition of any investments not in accordance therewith, upon a proper showing that the society will suffer by a forced sale thereof.

SECTION 270—RESERVES SHALL BE HELD FOR BENEFITS.

(Cross Reference, Page 193, Section 1.)

This is the same as the present law and provides in substance that any society which has or shall hereafter issue certificates on rates which shall create and maintain a reserve thereon, shall separate the assets representing such reserves and such assets shall be maintained separate and distinct from the other assets of the society, in trust irrevocably, for the payment of such certificates, with provision for a merger of the mortality upon all such members.

The latter portion of the section provides for a merger of the mortality upon all inadequate rate paying members and the classification of all inadequate rate paying members with or without a segregation of the funds contributed by any such class.

SECTION 271—INCORPORATION.

(Cross Reference, Pages 186-187, Section 7, with changes.)

While this provision follows generally the provision of the present law it was deemed necessary to make some changes. Under the present law, in addition to the general requirements, the incorporators seeking incorporation were permitted to solicit applications from not less than five hundred applicants who had paid one advance monthly mortuary assessment and which payments must be deposited in a solvent bank with a certificate from such bank filed with the Director, and after this, and compliance with the other organization requirements, a certificate of association or incorporation was issued. Under the proposed code there are various requirements which must be complied with, including the filing with the Director of a corporate surety bond in the amount of \$5,000.00 to guarantee return to the applicants if the organization is not completed within one year and this bond must be filed prior to the time the incorporators are permitted to solicit members and when this has been done and the other preliminary requirements met, the Director is empowered to issue a preliminary certificate, so that the incorporators may solicit the five hundred members for organization. Under the proposed code it is necessary that not only bona fide applications be secured from not less than five hundred members for at least \$1,000.00 of insurance each, but also the aggregate monthly payments received from those applicants must be not less than \$2,500.00, no part of which can be used for expense purposes. The proposed code provides also that the preliminary certificate shall expire one year from its date of issue.

SECTION 272—FOREIGN AND ALIEN SOCIETIES.

(Cross Reference, Pages 181-182, Section 3, with changes.)

This section is substantially the same as the present law with the exception that a foreign or alien society seeking to do business in Illinois must satisfy the Director that it has

the requirements for organization of a domestic society together with evidence that its investments are of the same general character that a domestic society is permitted to hold.

SECTION 273—CERTIFICATE OF AUTHORITY OF FOREIGN AND ALIEN SOCIETIES.

(New.)

This section provides for the issuance of a certificate of authority while under the present law the filing of the annual statement accompanied by the \$5.00 filing fee is considered as an automatic renewal of the license and no certificate is issued. Under the proposed code, the certificate of authority expires on the 30th day of June, subject to an annual renewal as of June 30th of each year thereafter.

SECTION 274—REPORTS AND VALUATIONS.

(Cross Reference, Pages 182-184, Section 4, with changes.
Page 184, Section 4a, with changes.)

The first part of this section covering the filing and publication of annual statements of all fraternal societies doing business in this State is essentially the same as the present law.

The remainder of the section is new. According to its provisions societies are now specifically required by statute to file a valuation report. Many societies in the past have already complied with this requirement since it was necessary for them to file valuation reports in many of the other states in which they operated but it was not until a year ago that this Department requested all fraternal societies to file these reports with this Department.

Most states have the filing date for valuation reports May 31st, but the proposed code requires that they be filed on or before the first day of March in each year, the same as the annual statements. The filing date of March 1st for valuation reports is required by this Department for the first time this year and a form letter to that effect was sent to all societies under date of November 21, 1934.

This section sets up a standard of solvency for fraternal benefit societies and requires that each society shall show 100 per cent solvency at least by December 31, 1945 or be subject to the rehabilitation or liquidation article of the code. If the financial deficiency of any society increases for two

successive years then the Director shall notify the society and require that it shall show 100 per cent solvency within the following three years. This provision is not entirely new since the state of Pennsylvania recently enacted a statute provision that these societies shall become 100 per cent solvent in five years.

The present statutes mention no valuation standards whatever except for juvenile insurance. This section of the proposed code provides for recognized valuation standards for life insurance benefits, annuity benefits and disability benefits and prescribes the Illinois Standard method of valuation.

It seems to us that this section is an important step toward securing the financial soundness and solvency of fraternal benefit societies. The standards set forth are almost as high as those required of old line companies. Slightly lower reserves are called for by this section than for old line companies principally because of the 4 per cent interest assumption instead of the old line requirement of $3\frac{1}{2}$ per cent. Furthermore, the National Fraternal Congress Table of Mortality is permitted for certificates issued prior to December 31, 1935 and this table produces slightly lower reserves than the American Experience Table.

Where standards of valuation are mentioned in the statutes of other states provision is usually included that these standards shall not be used as a basis of solvency but that a society shall be declared legally solvent as long as it has sufficient cash on hand to pay its just claims. This provision harks back to the day when fraternal societies were operated on a one rate assessment plan, and no reserves, or at best inadequate reserves, were maintained. We believe that this day has now definitely passed and that there is no logical reason why fraternal societies should not be required to attain and maintain a prescribed financial standard.

SECTION 275—PUBLICATIONS.

(Cross Reference, Page 187, Section 8a.)

This is the same as the present law and permits printing and publication of matters of public interest and provides that any profit therefrom shall accrue to the Society for the benefit of its membership.

SECTION 276—CHANGES IN CHARTER, ARTICLES OF INCORPORATION, ARTICLES OF ASSOCIATION.

(Cross Reference, Page 187, Section 7½, with changes.)

Under the present law no change in the charter or articles of incorporation or association is legal and valid until a certificate setting forth fully and definitely the changes proposed is submitted to and approved by the Director and every society having adopted any such changes is compelled to comply with the provisions of that law within sixty days thereafter and upon a failure to do so, the changes are ineffective. Under the proposed code no change in the charter or articles of incorporation or association is of legal effect until a certified copy of the same *as amended* is filed with and approved by the Director and such certified copy must be filed within thirty days after adoption of the changes. This section further provides that a copy of the charter or articles of incorporation or association of all foreign and alien societies *as amended* must be filed with the Director of Insurance of Illinois within thirty days after the approval thereof by the supervisory authority of the domiciliary state or country of such foreign or alien society.

Not only does this provision of the proposed code require a more prompt filing of such changes, but likewise requires a filing of the charter or articles of incorporation or articles of association in amended form and not merely the amendments thereto.

SECTION 277—AMENDMENTS TO CONSTITUTION AND BY-LAWS.

(Cross Reference, Page 182, Section 4, with changes.)

The present law provides for all domestic and foreign societies filing with the annual statement, a copy of the constitution and by-laws then in force, while the proposed code provides in addition thereto that a certified copy of all amendments or additions to the constitution and by-laws of all societies operating in the State of Illinois be filed with the Director within thirty days after the enactment thereof.

SECTION 278—LEGISLATIVE BODIES—VOTING.

(Cross Reference, Pages 187-188, Section 10, with changes.
Page 178, Section 1. Page 181, Section 2 $\frac{1}{8}$.)

The first paragraph of this section is substantially the same as the present law with the exception that no domestic society shall be permitted to hold a meeting of its legislative and governing body outside the State of Illinois unless such society shall have not less than five subordinate lodges or branches in the State, province or territory wherein such meeting is held. This being a prohibition in the statute renders the proceedings of a convention held in violation of the act a nullity.

The second paragraph of this section is the same as the present law except in a re-arranged form and except that it provides that no member under sixteen years of age shall be entitled to a vote in the convention, while under the present law the age is eighteen.

SECTION 279—SALARIES.

(New.)

The first portion of this section prohibits a domestic society from paying any salaries, compensation or emolument to an officer, trustee or director or to any person in any one year in excess of \$3,000.00 unless the payment be first authorized by the supreme legislative or governing body.

We feel that this portion of Section 279 overlooks the case of a deputy or organizer working on a commission basis or on a salary plus commission who could possibly earn more than \$3,000.00 in any one year, and in our opinion the first sentence of this section should be amended by substituting for the first sentence, the following sentence:

“No domestic society shall pay any fixed salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than three thousand dollars (\$3,000.00) to any person, firm or corporation, unless such payment be first authorized by the supreme legislative or governing body.”

This section also prohibits any domestic society from entering into an employment contract extending beyond a period of four years covering salaries, compensation or

emolument. Since the proposed code provides that domestic society must hold a meeting of the supreme legislative or governing body at least once in every four years, this provision was inserted to vest authorization for the execution, renewal or extension thereof in each successive convention.

The section also provides that no officer, trustee or director who is paid a salary of more than \$100.00 per month shall receive any other compensation. This provision was inserted in view of the fact that some societies have paid their officers a small salary and permitted the officers to receive additional compensation by writing insurance covering mortgage loans and real estate held by the society and in making appraisals of real estate for loan purposes and it was felt that it was more conducive to efficiency to insert this provision whereby the society would be obliged to pay a salary commensurate with the duties to be performed and moreover this provision will prevent future violations by such societies of the Agents, Brokers Qualification Act.

This section concludes with a provision that no domestic society shall grant any pension to any officer, trustee or director or to any member of his family after his death and was designed primarily to prevent dissipation of fraternal funds actuated by sentimental motives.

SECTION 280—SERVICE OF PROCESS.

(Cross Reference, Pages 184-185, Section 5, with changes.)

This is substantially the same as the present law except that it requires domestic, as well as foreign and alien societies to appoint the Director as attorney for service of process and requires all societies transacting business in Illinois to file such appointments within thirty days after effective date of code.

It was deemed advisable to make the same requirement of domestic as of foreign and alien societies for the reason that some Illinois societies which are rather small maintain no regular office and it is rather difficult at times to locate the proper officer for service of process. Then too, it gives the Department a better idea of the amount of litigation which each domestic society is having. This section as written does not make such service exclusive, but permissive only.

SECTION 281—CERTIFICATE OF AUTHORITY OF DOMESTIC SOCIETIES.

(New.)

This is a completely new section, except that in the past a certificate of authority was issued to a domestic society only when requested by such society. The filing of the annual statement accompanied by the filing fee of \$5.00 acted as an automatic renewal of the license for one year from March 1st.

Under this section, a certificate will be issued annually to all domestic societies as of June 30th, and the fee in connection therewith will be \$10.00 for the original and \$5.00 for each renewal thereof, as under the present law.

SECTION 282—REVOCATION OF CERTIFICATE OF AUTHORITY.

(Cross Reference, Pages 189-190, with Changes.)

Under the present law for certain causes, the Director was empowered to proceed against a domestic society by way of injunction. The procedure against a foreign society was by revocation of license.

Under the proposed code, for certain similar causes, the Director is empowered after notice given, to revoke the certificate of authority of either a domestic, foreign or alien society, and if such society be a domestic, the Director shall thereafter proceed against it under Article XIV, Rehabilitation, Liquidation, Conservation and Dissolution of Companies.

SECTION 283—HOSPITAL SERVICE.

(Cross Reference, Pages 194-196, Section 1-7.)

This is the same as the present law and permits a domestic society to operate a department as a part of its organization for furnishing to sick, disabled and distressed members and their families, free medical, home, sanatorium and hospital service and treatment, and to create, maintain and disburse for such purpose, a trust fund to be raised by voluntary contributions, and such department is declared to be a charitable institution and a competent beneficiary.

SECTION 284—HOSPITALS AND SANATORIUMS.

(Cross Reference, Pages 196-198, Section 1.)

This is the same as the present law and permits a domestic society to operate a department as a part of its organization for the benefit of its sick, disabled and distressed members and their families and dependents, hospitals, asylums and sanatoriums, to be operated without profit, and this section is permissive for foreign and alien societies operating in the State of Illinois.

SECTION 285—EXEMPTION OF CERTAIN SOCIETIES.

(Cross Reference, Page 180, Section 1, with changes, and new portions added.)

The statutes of most states governing fraternal benefit societies contain provisions exempting certain class of organizations of a fraternal nature even though paying benefits.

The first paragraph of this section is new and exempts the grand and subordinate lodges of such societies or orders operating in Illinois, who pay benefits exclusively through the local or subordinate lodges. This exemption would apply to orders such as the Ancient Order Free and Accepted Masons, Independent Order of Odd Fellows, Benevolent and Protective Order of Elks and Knights of Pythias.

The second paragraph (a) is the same as the present law except that there is included in the exemption, labor unions, under the term "crafts".

The third paragraph (b) is new and exempts societies which limit their membership to employees of a particular city, town, designated firm, business house or corporation, where provision is made for a death benefit of not more than \$400.00 or disability benefits of not more than \$350.00 to any one person, in any one year, or both.

The fourth paragraph (c) exempts domestic societies or associations of a purely religious, charitable and benevolent nature, where provision is made for a death benefit of not more than \$400.00 or disability benefits of not more than \$350.00 to any one person, in any one year, or both.

The fifth paragraph is likewise new and provides that all societies or associations described in subsections (b), or (c) providing for death or disability benefits *for which certificates are issued*, or any society or association described in subsec-

tion (c) having a membership of more than 1,000 shall not be exempt, but must comply with the code.

The sixth paragraph prohibits any society exempt by the provisions of this section, from giving or allowing or promising to give or allow any compensation for procuring new members.

The seventh paragraph of this section deals with societies whose membership is confined to a religious denomination and exempts such societies only from ritualistic ceremonies.

The eighth and last paragraph of this section is new and empowers the Director by examination or otherwise to secure all information necessary to determine the status of and method of operation of all such societies for the purposes of the exemptions provided.

SECTION 286—LIMITATIONS UPON POWER TO WAIVE PROVISIONS OF SOCIETY'S LAWS.

(New.)

Under the existing laws and decisions of states where there is no statutory enactment to prevent a waiver of the constitution and by-laws of a fraternal benefit society, such societies have in a great many cases been held liable on claims on which no legal liability existed, except under the doctrine of waiver. Especially is this true with respect to the acceptance by a local financial officer of past due premiums with knowledge at the time of an impaired condition of health of the member. This was obviously unfair to the society and its membership in general, especially when taking into consideration that the courts not only compel strict compliance by the society of the provisions of the certificate, constitution and by-laws, but moreover resolve all ambiguities of the contract and questions of forfeitures in favor of the insured member. This section was therefore added, in part to afford greater protection to the societies and their membership in general.

At the time this provision was inserted, there was under discussion, a provision to be inserted in the Fraternal portion of the Code, closing in part the "open contract"; that is, a provision that where a society was charging rates sufficient to create and maintain a reserve with non-forfeiture values, that while the constitution and by-laws might thereafter be amended no after-enacted law could be passed taking away

in whole or in part the non-forfeiture values of extended or paid-up insurance, although the contract should remain open with respect to other non-forfeiture values. It is our opinion that such a provision should be added and we do not contemplate any serious objection in that regard from the societies, since during the recent depression few if any societies amended their by-laws disturbing such values except by a reserve lien to attain a solvency of 100 per cent and while some few societies have found it necessary to place a reserve lien against outstanding certificates during the depression in order to attain a solvency of 100 per cent, under the provisions of the proposed code regarding rates and valuations, the future necessity for an Illinois society to resort to such a lien should be materially lessened especially where the right to levy additional assessments is not in any manner disturbed.

We are of the opinion however, that when non-forfeiture values are granted the non-forfeiture values of extended and paid-up insurance should thereafter not be disturbed and that the open contract in that particular should be closed.

We suggest inserting in Section 266 at the end of the first paragraph after changing the period to a semicolon, the following:

; “*provided, however, that no domestic, foreign or alien society operating in this State on the effective date of this code or thereafter organized, incorporated or permitted to do business in this State, with outstanding contracts or contracts thereafter issued, providing for non-forfeiture values, shall by by-law amendment or otherwise rescind or in any other manner alter, change or amend the extended or paid-up provisions and values of such contracts.*”

SECTION 287—FRAUDULENT STATEMENTS.

(Cross Reference, Page 189, Section 11.)

This is the same as the present law and provides a penalty against any person, officer, member or examining physician of a society who with intent to defraud, makes any statement or representation with respect to an application for membership in a society or for the purpose of obtaining any money or benefit from such society. This provision also provides a penalty against any person who with intent to defraud a society makes a false statement of any material fact in a sworn

statement regarding the death and disability of any member for the purpose of procuring the payment of any benefits or in making any false statements in a verified report or declaration under oath required or authorized by the article.

SECTION 288—PENALTIES.

(New.)

This is an entirely new section and imposes a penalty on any domestic, foreign or alien society upon failure or refusal of such society, its officers, or representatives to comply with any order issued by the Director under the provisions of the code after reasonable notice and a hearing held and provides for a revocation of the certificate of authority of such society and that such officers or representatives upon violation of any such order shall be deemed guilty of a misdemeanor and subject to a fine of \$1,000.00 recoverable by the State's attorney in the county in which such violation occurs for the use of the people of the State of Illinois.

SECTION 289—POWERS RETAINED.

(New.)

Since the present law would be repealed in its entirety it is necessary to insert this provision as a savings clause making all societies legally operating in the State of Illinois on the effective date of the new code subject to all provisions thereof.

SECTION 290—INJUNCTION PROCEEDINGS.

(Cross Reference, Pages 189-190, Section 12, with changes.)

While this provision is partially the same as contained in the present law there are some material changes as hereafter noted, made necessary by reason of the various changes in the proposed code. The injunction proceeding was inserted in the proposed code in addition to making such societies subject to Article XIV (Rehabilitation, Liquidation, Conservation and Dissolution of Companies), for the reason that some fraternal societies operating in the State of Illinois are voluntary unincorporated associations, and under the Practice Act of this State, it is necessary to proceed against such association by way of injunction instead of quo warranto which latter proceedings is applicable to a corporation. In either

event however, an injunction will lie to restrain the society from further operation and which is a proper remedy in conjunction with quo warranto proceedings.

Under the proposed code an additional ground for injunction proceedings is the failure of a society to carry out its contracts in good faith and which while a broad provision, was inserted with the idea of being broad enough to cover cases not involving actual fraud. Under the present law a society had ninety days in which to pay its claims following date of approval and it developed that some societies were actually delaying approval of claims for ninety days and then availing themselves of the statutory period of an additional ninety days in which to make payment. While such procedure was not violative of any express provision of the statute, it was, however, violative of the spirit of the law and for that reason a provision was inserted in this section providing that all claims must be approved or disapproved within sixty days after receipt of due proofs, and further compelling all societies to pay or deny liability within ninety days from due proof of loss.

Under the present law the Director may proceed by way of injunction against any society whose membership after one year's existence is below three hundred while this section of the proposed code provides for injunction where after one year's existence, the membership shall be below five hundred.

Under the present law there is no provision for injunction where a society determined to discontinue business while under this section of the proposed code such a provision is inserted so that creditors and claimants may be properly protected and an equitable distribution made of any remaining assets.

SECTION 291—FUNDS EXEMPT FROM LEGAL PROCESS.

(Cross Reference, Page 187, Section 9.)

This is the same as the present law and is designed primarily as a protection to the society against attachment, garnishment or other proceedings, while the funds are still in possession of the society. After payment by the society the protection of the statute ceases.

SECTION 292—SUBJECT TO CODE.

This section enumerates the various sections of the general provisions and other articles of the proposed code made applicable to fraternal benefit societies.

With particular reference to Section 97 made applicable to fraternal benefit societies:

In the tenth line of Section 97, we suggest that the word "policy" be changed to "contract." In Section 266 of Article XXII the contract is defined, including the certificate or policy. In Section 223 of Part (d) on page 128, Article XIX, governing life companies, a life contract is defined, including the policy. If the word "policy" was changed to "contract", as above suggested, it would sufficiently cover the fraternal question and would not affect any other forms of insurance contracts. Without that change a fraternal benefit society being subject to Section 97, could omit from the certificate or policy, any reference to representations and warranties and insert such a provision in the by-laws and thereby defeat the purpose of Section 97 as applicable to fraternal benefit societies.

In addition to the sections of the General Provisions enumerated in Section 292 of Article XXII it is our opinion that the following sections of the General Provisions should likewise be added as applicable to fraternal benefit societies:

Section 70—Excessive Commission for Sale of Land Unlawful.

Section 71—Directors Must Authorize Loans.

Section 73—Reinsurance of Individual Risks in Authorized Companies.

Section 81—Vouchers for Disbursements.

Section 206—Fees and Charges, (insofar as the same may be applicable).

Section 218—Reciprocity as to Rules, Regulations, Fees, Taxes and Penalties.

NOTE:

It is noted in Section 430 (Acts Repealed) of Article XXXII, commencing on page 240 and specifically treated on page 246, that there has been repealed an act entitled "An Act concerning larceny and embezzlement of funds and property of fraternal benefit societies, corporations and associations, and their subordinate lodges, by officers thereof,"

approved June 9, 1909. The repeal of this particular Act is an oversight for the reason that that Act is in fact a portion of the Criminal Code of this State and was only incorporated in the Illinois Insurance Laws (Insurance Department Edition), as a matter of convenience for ready reference. Therefore that portion of Section 430 should be stricken.

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